

ADEPT
Legal Commentaries

November 2004

Parliament Activity, November 1-5, 2004

10 November 2004

During the aforesaid period the draft law on amending the Law on State Budget for 2004 took the centre stage.

I. Law on the Amendment of the State Budget for Year 2004

ADEPT Comment: The law decreases budget revenues by 170 million Lei and increases expenditures by 109 million Lei. Total budget revenues would amount to 5.477 million Lei, whereas total expenditures 5.416 million Lei with a meagre budget surplus.

The law has shown that this year less excises would be levied than initially forecasted - 109.1 million Lei (only for oil and diesel budget would not get excises worth 59.1 million).

Due to the fact that national currency exchange rate against other convertible currencies was lower than the forecasted one, net revenues to the state budget had reduced by 251 million Lei. Noteworthy, National Bank gathered a rich harvest of criticism from the President himself who threatened with reshuffles in the Bank leadership by the end of the year.

Under the budget, funds were allotted to pay back compensation as ruled by the court for cancelling contracts with foreign investors: 20.2 million Lei to Dacia hotel owners and 25.4 million Lei to Europharm. Also under the law budget would not receive foreign grants worth 277.5 Lei.

To collect additional revenues as provided by the law, by the end of the year fiscal revenues should surge by 267 million Lei, whereas revenues collected by Customs Department by 471 million Lei.

The law provides additional expenditures in several areas, one of them redeeming debts of the State Company "Teleradio-Moldova" worth 14.2 million Lei. Opposition criticized this initiative. It also provides for establishing a fund worth 15.3 million Lei providing subsidies for fall agricultural works.

II. Law on Reducing VAT on Sugar

ADEPT Comment: Under the law, 8% VAT shall be applied to beet sugar imported and or delivered on the soil of the Republic of Moldova, as compared to 20% this year.

The law comes in response to the crisis, when sugar market was over flooded (about 108 thousand tones amidst average domestic consumption of 80 thousand tones) as a result of smuggling from Ukraine through the eastern regions of Moldova.

It is expected that the law would put an end to smuggling, boost domestic production and as a result bring more revenues to the state budget.

III. Law on Modification of the Law on Veterans

ADEPT Comment: Under the law, persons who have a work experience over 35 years for women and 40 for men and are not decorated with orders or medals, have no honorific titles shall be eligible to one free trip to a sanatorium once in three years. Until now only veterans decorated with medals or honorific titles were entitled to such benefits.

IV. Law on Ratification of the Convention Prohibiting Development, Production, and Stockpiling of Bacteriologic Agents and Toxic Weapons

ADEPT Comment: Convention was signed on April 10, 1972. This convention bans the development, production and stockpiling of such substances not required for peaceful purpose.

It is believed that by ratifying the convention our country would earn a pacifist image and would be seen as sharing commitment to international security and disarmament.

Parliament had one reservation to the Convention, namely until restoring territorial integrity of the Republic of Moldova, Convention provisions shall apply only on the soil under the control of Republic of Moldova authorities.

V. Law on Enforcing the Convention Prohibiting Development, Production, and Stockpiling of Chemical Weapons and their Destruction

ADEPT Comment: Moldova ratified the Convention back in 1995 and has been in force on the soil of the Republic of Moldova for almost eight years. The law passed by the Parliament outlines procedures of enforcing the law, rights and obligations of the subjects of law, interdiction to any person to use prohibited chemical weapons, as well as responsibilities of the specialized National Authority in the field.

Parliament Activity, November 8-12, 2004

19 November 2004

High on the Parliament agenda during the aforesaid period was the Law on the State Budget for 2005. Deputies both from the majority faction and the opposition presented many suggestions and objections regarding this document. Requests from other public administration, professional, educational and trade union institutions and organizations were also examined. Most of the proposals lacking financial argumentation were rejected as their expenses were reaching up to one billion Lei.

During the final discussion one made a decision that the estimated resources for 2005 be oriented towards the 30 percent increase in wages of teachers from education institutions as well as from science and innovation fields.

Also, the sources needed for the indemnities for children's birth and the food ration for primary school pupils were increased. In addition, the Parliament decided to increase the state contribution to the agrarian sector support fund with 20 million lei. Parliament also decided to increase with 3 million lei the allocations for the Department of Penitentiary Institutions, although, the decision taken this year regarding the amnesty of certain categories of persons is supposed to reduce the expenses of these institutions. The allocations for the courts of law were increased with 1.5 million lei and were intended to endow them with the necessary inventory and equipment.

The Parliament supported the proposals regarding the increase of allocations for:

- cinematography;
- state co-financing with 2 million Lei of a grant offered by the American CRDF Foundation; these resources will be used for the technical endowment of the library of the Academy of Science;
- ATU Gagauzia with 3 million Lei;
- support of activities regarding the extension and protection of forestry with 11 million Lei;
- a 5-million increase of allocations for the employees of Center for Fighting Corruption and Organized Crime, for equipment and meals.

Parliament decided to reorient the sources for financing the participation quota in the procurement and construction of housing for the central public authorities in a total amount of approximately 2 million Lei.

Besides the Law on state budget for 2005, the Parliament examined other legal acts; some of them raised the general interest due to the aspects they involve and the attention by different social structures.

I. Law on Granting Additional Land for Building the Agricultural Market

ADEPT Comment: Under the law passed by the Parliament, 8 ha of farm land will be provided for the extension of "Gradina Moldovei" Commercial Center. Previously, the Parliament has allotted 3 ha of land for the dislocation of the respective Commercial center and Northern Bus Station, which are to substitute the current Market and Central Bus Station.

By increasing the surface, one plans to adjust the respective center to Western European standards on retail and wholesale trade of agricultural products and food, reaching an outlet capacity of 100 thousand tones per year. The aim of the commercial center is to offer to the businesses and the physical entities the possibility to trade directly the agricultural production.

While discussing the draft, the opposition asked the Government and Parliament to provide information regarding the coordination of the planned constructions with the authorities of the local public administration from Chisinau Municipality. In response it was declared that the construction is made on the land belonging to the central authorities, with the approval of institutions authorized to perform the expertise and authorization of constructions.

It should be mentioned that previously the Government has undertaken several measures to improve the activity of Central Agricultural Market from Chisinau but all these attempts failed, the current situation bearing the same negative connotations (lack of an efficient quality control mechanism, presence of multiple intermediaries, blocking of the circulation in the neighboring streets etc.). The police actions against unauthorized vendors raised street protests and the negative attitude of municipal mayor's office.

II. Law on the Recovery of Tobacco Enterprises

ADEPT Comment: Parliament decided to suspend the financial penalties and sanctions of certain tobacco enterprises for not disbursing in time the respective payments to the national budget and national social security budget, as well as the penalties for non-reimbursement of the credits granted by the Ministry of Finance.

In addition, local public administration was suggested to examine the possibility of canceling the financial penalties and sanctions of the above-mentioned enterprises for not disbursing in time the payments of local taxes. The cost thereof is estimated at 12 million Lei.

Outdated processing equipment, the considerable increase in the cost of energy resources and, implicitly, the abandonment of technical and technological base were the main reasons that caused the respective situation.

The sale of local tobacco products faces difficulties because of the massive penetration of tobacco products from China, India and other countries, which are delivered at lower prices compared to those of Moldovan market.

In the last years, the price of Moldovan tobacco products reduced from \$1.7 to 1.1-1.25. Thus, the economic efficiency of the branch reduced, while the technical and material base for sorting and packaging of tobacco products in the local agricultural units degraded.

By reimbursing the bank credits and penalties calculated on them, the tobacco factories could not disburse the current payments to the national budget, social fund and local budgets. This caused new penalties and sanctions, calculated in accordance with the provisions of the legislation in the field at the given moment.

III. Law on the Reorganization of State Chancellery into Government Apparatus

ADEPT Comment: Parliament adopted in its first reading a draft law stipulating that a Government Apparatus will be created replacing the State Chancellery and will be managed by a director of the Apparatus. It will consist of the councilors of the Prime minister and groups of public servants specialized in the organization of the internal activity of the Executive. The idea of the respective reformation was launched recently by the President of Moldova who qualified the preservation of State Chancellery as an anachronism and as a persistence of the old working methods within the central public administration.

Although, it has been voted in its first reading, the draft raised many objections from most of the deputies who were against the procedure of the respective reorganization, the legal succession and the status of the Government Apparatus employees. One also mentioned the need to determine in advance the status of the offices of the State Chancellor that insure the verification of the control of the legality of acts issued by the local public administration.

The parliamentarians objected to the obligatory knowledge of Russian and Moldovan language for the servants who will be employed in the Government Apparatus, as well as to the interdiction of functioning of party organizations and public associations within the Government Apparatus.

Several independent experts have expressed contradictory opinions regarding the reasons that determined the reorganization of State Chancellery. They invoked the need to avoid the accountability on civil cases where the Government is attacked, the desire to avoid the patrimonial prosecution in lost legal trials, the desire to subordinate certain structures of the Chancellery to other central structures, etc.

IV. The draft law regarding the control of legality of acts passed by ATU Gagauzia

ADEPT Comment: The deputies adopted in the first reading a draft law that establishes the mechanism to control the legality of the acts issued by the public authorities from ATU Gagauzia.

The project proposes that the control over the legality of normative acts of public authorities from ATU Gagauzia be exercised by Government through State Chancellery.

It provides that in case contradictions are found with the Constitution and legislation in force, when verifying the legality of acts issued by the Gagauz authorities, the Government shall notify the issuing authorities about the illegality of the verified act, requesting its modification, or total or partial abrogation. In case the issuing authorities maintain their position or do not reexamine the contested act within the given timeframe, the Government shall refer to the Court of Appeal in Comrat, in the proceeding of the solicitor's office.

The need to adopt the modifications is dictated by the adjustments made previously to the Constitution of Moldova due to which the Supreme Law was completed with a special article dedicated to ATU Gagauzia.

Parliament activity, November 15-19, 2004

25 November 2004

During this week debates in Parliament centred around the draft law on Council of Europe expertise of draft laws. The draft was developed by the Government and outlines the procedure of submitting draft laws for expertise and enforcing Council of Europe recommendations. The need to regulate this stems from the inefficiency of the existing mechanisms, when many draft laws are passed without Council of Europe expertise, while others albeit receiving endorsement await adoption.

Under the draft, Ministry of Justice was to become the institution in charge, fact that garnered rich criticism from the opposition. They argued that a specialised institution of the executive branch would be given powers to coordinate and control the activity of the state institutions - Parliament, Government and Presidency. Deputies had many other objections as regards the draft law, but after a break they adopted a Resolution in this respect that provides for:

- drawing the list of draft laws that are to be submitted for Council of Europe expertise, at the initiative of the central institutions and in consultation with Council of Europe;
- procedure for examining recommendations made by the Council of Europe and their enforcement;
- on-going monitoring over the enforcement of the CE recommendations.

So far Council of Europe provided expertise on several much-disputed drafts, namely Law on Local Government, Law on Administrative-Territorial Division of Moldova, Law on "Teleradio-Moldova" Public Broadcaster, Penal and Civil Code.

During the week Parliament passed a number of other important laws, namely:

I. Law on Raising the Minimal Quota of Payments in Cash

ADEPT Comment: As it stands now, businesses may make payments in cash up to 15,000 Lei only, otherwise the Centre for Fighting Economic Crime and Corruption sets a fine equal to 10% of the amount. These sanctions do not apply if payments are made to individuals, farms, licence holders, and several other cases. The Parliament now raised the quota to 100,000 Lei. The move is supposed to eliminate one of the barriers the business is struggling with. Noteworthy, previously the Parliament refused several times to raise the amount on the grounds it would channel liquidity to shadow economy.

II. Law on Reorganisation of the State Chancellery into Government Apparatus

ADEPT Comment: Several provisions were excluded from the draft voted in the first reading as regards obligatory command of Moldovan and Russian by public officers, as well as prohibiting members of political organisations and public associations to serve in Government Apparatus.

Noteworthy, under the language legislation, chiefs, employees of the state power, state administration, public organisations; as well as employees of enterprises, institutions, organisations in direct contact with citizens (healthcare, public education, media, transportation, telecommunication, trade, social services, communal husbandry, law enforcement, safeguard service, etc), regardless of nationality should fluently speak Moldovan, Russian and in localities largely populated by Gagauz people the Gagauz language as well - so as to observe citizens' right to choose the language of communication.

III. Draft law on cancelling penalties and fines to economic agents

ADEPT Comment: Parliament cancelled penalties and fines worth 12 million Lei calculated to economic agents in 2001-2002 who paid all debts. Among those enterprises are several giants: "Termocom", "Tutun CTC", Railroad of Moldova, "Pielart", "Micron", etc. One of the opinions voiced during the debates was that such initiatives may determine debtors not to pay the debts to state budget.

Government believes that on the contrary such measures encourage the debtors to redeem the debt so as to be exempted from fines. Noteworthy, incumbent Parliament passed more than twenty such initiatives exempting or cancelling fines to many state or private institutions worth over 100 million Lei.

Parliament Activity, November 22-26, 2004

9 December 2004

During this period, the Parliament examined several important drafts, the most relevant of them referring to the obligatory medical insurance.

Of a certain interest were the discussions regarding the Law on Transferring the Unclaimed Shares and Participation Quotas pursuant to the Law on Restructuring of Agricultural Enterprises subject to privatization. Several parliamentarians regarded the adoption of this law as an expropriation, while the majority supported it on the grounds it would enhance the management efficiency of the relevant shares, establish their real owner and avoid the alienation of public property by the organizations who are not legal owners of this property.

I. Law on Obligatory Medical Insurance Fund for 2005

ADEPT Comment: The revenues and expenditures for the obligatory medical insurance fund for 2005 were established at 1.32 billion lei. The transfers from national budget will make up 840 million lei. The number of persons insured from the budget is about 1.26 mil.

The obligatory medical insurance was established at approximately 670 lei.

The obligatory medical insurance calculated as a percentage of contribution from salaries and other rewards for the relevant categories of payers were established at 4 percent (2 percent for the employer and 2 percent for the employee).

In 2005, the fine for delay in due payment of obligatory medical insurance contributions will make up 0.1 percent of the amount for every day of delay. This amount will be transferred to the accounts of the National Company of Medical Insurance.

The National Company of Medical Insurance was authorized to redistribute with the consent of the Ministry of Health the allocations of the reserve fund among the other funds of obligatory medical insurance.

The bank that will serve the accounts of obligatory medical insurance funds will pay the interest to the accounts balances according to the amounts stipulated in the contract, but not less than the rate applied by the National Bank of Moldova in re-financing the commercial banks during 2 months through procurement operations of state shares, which are transferred monthly to the accounts of State Treasury, National Company of Medical Insurance and its territorial sanitary and medical institutions and agencies.

The revenues accumulated in the account of the National Company of Medical Insurance are allotted to the funds for obligatory medical insurance. In 2005 it is planned to use the resources from this fund to cover the expenses necessary for the accomplishment of the unique program that includes emergency medical assistance, primary medical care, specialized out-patient medical assistance, in-patient medical assistance, and other relevant services.

II. Law on the Modification of Legislation in Fighting Terrorism

ADEPT Comment: The law adopted by the Parliament introduced several new regulations in the Law on Fighting Against Terrorism, according to which:

1. If necessary, Moldova may request from other states the necessary assistance, as well as participate in the release of hostages based on international treaties signed by Moldova.
2. The following authorities responsible for fighting terrorism were appointed:
 - The Government shall be the main authority responsible for the organization of activities in fighting terrorism and assuring the necessary forces, means and resources;
 - The Supreme Security Council of Moldova shall assure the coordination of the activities of the authorities involved in fighting terrorism;
 - The Information and Security Service shall be the national authority involved directly in fighting terrorism;
 - The General Prosecution Office, Ministry of Internal Affairs, Ministry of Defense, Border Troops Department, Department for Emergencies, State Security and Protection Service, Customs Department, Information Technologies Department, Department of Penitentiary Institutions of the Ministry of Justice will participate in fighting the terrorism.
3. The Law stipulates the creation of the Anti-terror Center of the Information and Security Service which will be authorized to conduct, coordinate and implement counter-terrorism activities.

The respective law also stipulates that the special foreign anti-terror formations, which carry out joint activities based on international agreements, are exempt from registration with the regional bodies of the Department of Information Technologies without the right to temporary or permanent residence on the territory of Moldova.

These formations cannot be subject to regulations regarding the visa regime when entering or leaving the soil of Moldova.

Foreign vessels, including military (maritime and aerial), the equipment and armament of the special counter-terrorism formations that carry out joint activities based on international agreements, as well as the official documentation of the special above-mentioned formations will be exempt from customs control.

With the creation of the Anti-terrorist center within the Information and Security Service, it will be entitled to carry out prosecution of terrorism-related crimes.

III. The Law on Measures of Transmitting the Shares and Unclaimed Participation Quotas pursuant to the Law on Restructuring of Agricultural Enterprises Subject to Privatization

ADEPT Comment: The Law on Restructuring of Agricultural Enterprises subject to Privatization established the specific ways of privatization from the account of value quotas and quotas of equivalent land, establishing that their owners either transform the relevant quotas into shares or form individual farms on their basis.

The respective Law established that:

- a. Nonmaterial assets, constructions, including unfinished ones, other unsolicited property during the calculation of the value quotas of the remaining property are transferred at no charge into the property of local public administration.
- b. The property in calculated shares, which remain unclaimed until the end of the liquidation of the enterprise, are transferred into the administration of local public administration that will use this property until its legal claim. The property subject to privatization, transferred to the local public administration, is given in kind to its owners within 30 days from the submission of requests considering its usual wear.

The respective legal provisions were enforced only partly; a part of the shares remained unclaimed within the period established by the legislation and was transferred to the local public administration without establishing the ownership over this property.

The Law recently passed by the Parliament provides that the shares and/or participation quotas of the liquidated agricultural enterprises, transferred into the administration of local government and unclaimed by the participants in privatization process within the established timeframe are given to the participants in the privatization in accordance with the decisions of the privatization committee, adopted at the moment of termination of the agricultural enterprise.

In addition, the Law provides that the Department of Privatization shall sell the shares of liquidated agricultural enterprises transferred into the state ownership or into the ownership of territorial-administrative units, with their consent and in accordance with the procedures established by law.

IV. The Law on Canceling Penalties and Fines

ADEPT Comment: The Law adopted by the Parliament cancels 50% of the penalties and 50% of the fines of the tax-payer who shall not have arrears as of December 31, 2004 both for the State Tax Service and the Customs Department.

The declared goal of the Law is to stimulate the taxpayers to disburse the payments into the consolidated budget, canceling in exchange their delay penalties and all kinds of fines for taxes, established by the effective legislation and reflected in the record-keeping systems of the State Tax Service and Customs Department.

As of September 1, 2004, the arrears to the consolidated budget summed up approximately 3 billion Lei out of which more than half represented delay penalties and fines. It was estimated that in this case, the state would have more to gain than if it were to await the payment of debts together with the fines and delay penalties.

Previously, when similar Laws exempting enterprises from fines and penalties were examined in Parliament, several parliamentarians opposed it on the grounds such moves were discouraging tax-payers to pay their debts. On the other hand, the failure to collect the taxes for a long time reduces their value due to the inflation and the devaluation of the national currency exchange rate.